Subsidy Advice Unit Report on a Proposed Subsidy to Shearer Property Group Limited and Hill Holdings Limited

Referred by Coventry City Council

3 August 2023

Subsidy Advice Unit

Part of the Competition and Markets Authority

Contents

1. Introduction

1.1 This report includes an evaluation prepared by the Subsidy Advice Unit (SAU), part of the Competition and Markets Authority, under section 59 of the Subsidy Control Act 2022 (the Act).

1.2 The SAU has evaluated Coventry City Council's (the Council) assessment of compliance of the subsidy for the Coventry City South Development (the Redevelopment), with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).[1] This report is based on the information provided to the SAU by the Council in its Assessment.

1.3 This report is provided as non-binding advice to the Council. The purpose of the SAU's report is not to make a recommendation on whether the subsidy should be given, or directly assess whether it complies with the subsidy control requirements. The Council is ultimately responsible for granting the subsidy, based on its own assessment, having the benefit of the SAU's evaluation.

1.4 The SAU's approach to the evaluation is commensurate with the circumstances of the subsidy referred.

1.5 A summary of our observations is set out at section 2 of this report.

The referred subsidy[2]

1.6 The Council proposes to award Shearer Property Group Limited (SPG) and Hill Holdings Limited (HHL) funding for a mixed-use redevelopment of the southern part of Coventry City Centre (an area known as 'City Centre South').

1.7 The Council appointed SPG as development partner in 2019. SPG has appointed HHL as its funding partner. The Council explained that HHL has taken a shareholding in the SPG subsidiary Shearer Property Regen Limited (SPRL) that will be taking the development forward.[3] According to the Council, HHL and SPG would be the beneficiaries of the subsidy because both will exercise control over, and therefore form a single economic entity with, the direct recipient of the Council funds, SPRL. Together SPRL, SPG and HHL are referred to as 'the Developer' in the remainder of this report.

[1] Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

[2] Referral of proposed subsidy to Shearer Property Group Limited and Hill Holdings Limited by Coventry City Council in relation to the redevelopment of the southern part of the city centre.

[3] HHL initially acquired a 33.3% shareholding in the special purpose vehicle established by SPG to undertake the redevelopment project. HHL's shareholding is expected to increase to 80% once certain conditions are met.

1.8 The Council will contribute a total of approximately £98 million (the 'Total Contribution') to the Redevelopment. The Council considers in its Assessment that only a portion of the Total Contribution (£37.285 million) constitutes a subsidy under the Act. This comprises:

1.8.1 Part of a cash sum to help meet an anticipated shortfall in development profit (the Reverse Premium); and

1.8.2 Additional funding to facilitate the delivery of the Redevelopment (the Additional Viability Gap Funding).

1.9 The Council submitted that the remainder of the Total Contribution does not constitute a subsidy under the Act. This consists of:

1.9.1 The costs of site assembly and demolition: the Council will use its compulsory purchase powers where necessary to assemble the site and demolish the existing structures to leave the site suitable for redevelopment by the Developer. The site will then be transferred by way of a long leasehold interest by the Council to the Developer at a price expected to reflect market value supported by a professional valuation.

1.9.2 The portion of the Reverse Premium which is funding the construction of public amenity infrastructure.[4]

1.10 It is not the SAU's role to determine what constitutes a subsidy or its value.[5] The present report has therefore been prepared on the assumption that the subsidy referred to the SAU constitutes a subsidy under the Act and that its scope is limited to the portion of the Total Contribution which the Council considers to be a subsidy, which amounts to £37.285 million and comprises part of the Reverse Premium and the Additional Viability Gap Funding.

SAU referral process

1.11 On 16 June 2023, the Council requested a report from the SAU under section 52(1)(a) of the Act. The SAU notified the Council on 22 June 2023 that the SAU would prepare and publish a report within 30 working days, on or before 3 August 2023. The SAU published details of the referral on 22 June 2023.

1.12 The Council explained that the subsidy is a subsidy of particular interest because the amount exceeds the thresholds set out in Regulation 3(2) of the Subsidy

[4] The Council explained that it excluded from the amount of the subsidy costs used to fund the construction of infrastructure which is open to all potential users equally, not commercially exploited and not designed to suit the needs of one or more identified users.

[5] See SAU Guidance, paragraph 2.3.

Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022.[6] The amount of the subsidy to be provided is £37.285 million.

[6] See The Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022 which set out the conditions under which a subsidy or scheme is considered to be of particular interest.

2. Summary of the SAU's observations

2.1 The Assessment is structured in line with the four-step process described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the Statutory Guidance) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the SAU Guidance).

2.2 Overall, we consider that the Assessment shows that the Council has carefully considered the subsidy control principles. The Council provided a significant number of documents evidencing decision-making prior to the giving of the subsidy, including for instance the report to Council Cabinet seeking approval for the project, the full business case prepared by West Midlands Combined Authority and several independent reports commissioned by the Council to assist with its decision making.

2.3 However, the Assessment could be better aligned with each of the four steps, to ensure that relevant considerations are included in the assessment of the correct step. We have also found that the Assessment could be improved by:

2.3.1 identifying clear and specific policy objectives that are directly linked with the market failures and equity rationales identified;

2.3.2 providing further evidence and analysis to explain how the payment of a Reverse Premium as well as the Additional Viability Gap Funding is proportionate and would not compensate for costs that the beneficiary would have funded in the absence of the subsidy; and

2.3.3 ensuring that the benefits taken into account in the balancing exercise are linked with the specific policy objectives of the subsidy.

2.4 Our report is advisory only and does not directly assess whether the subsidy complies with the subsidy control requirements. The report does not constitute a recommendation on whether the subsidy should be implemented by the Council. We have not considered it necessary to provide any advice about how the proposed subsidy may be modified to ensure compliance with the subsidy control requirements.[7]

[7] Section 59(3)(b) of the Act.

3. The SAU's evaluation

3.1 This section sets out our evaluation of the Assessment, following the four-step framework structure used by the Council.

Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use

3.2 The first step involves an evaluation of the Assessment against:

3.2.1 Principle A: Subsidies should pursue a specific policy objective in order to (a) remedy an identified market failure or (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns); and

3.2.2 Principle E: Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.[8]

Policy objectives

3.3 The Assessment mentions that the Council has had a long-standing ambition to bring forward a mixed use development at City Centre South. It lists various local policies relevant to the Redevelopment and various benefits that the Council envisages it will deliver, including:

3.3.1 regeneration: transforming six and a half hectares of the city centre to create a new quarter of up to 1,500 new homes and complementing the Council's wider ambitions for the nearby Friargate area of Coventry City;

3.3.2 new homes: delivering a range of housing options, including affordable housing;

3.3.3 enhancing the City's reputation and offer: this project will complement other initiatives such as the transformation of the railway station;

3.3.4 improving the viability of existing businesses;

3.3.5 health and well-being: providing a significant amount of open space for residents and visitors to socialise and relax;

[8] Further information about Principles A and E can be found in the Statutory Guidance (paragraphs 3.18-3.42) and the SAU Guidance (paragraphs 4.7-4.11).

3.3.6 environmental: bringing underutilised city centre land into productive use, removing poor quality buildings; and

3.3.7 Net Zero: encouraging sustainable modes of transport, new planting, and living roofs.

3.4 We consider that the Assessment does not clearly identify a specific policy objective for the purposes of Step 1 of the Assessment. While some of the policies and benefits listed appear directly linked with the market failure or equity rationale identified (for instance, the benefits around regeneration and new homes), others seem more ancillary to the Redevelopment (for instance, the benefits around health and well-being, the environment and Net Zero). The Assessment would be improved by stating clear and specific policy objectives which are directly linked to the immediate aim of the subsidy, and with the market failure and equity objective identified.

Market failure

3.5 The Statutory Guidance sets out that a market failure occurs where market forces alone do not produce an efficient outcome. The most common cases of market failure which are relevant to subsidy control occur when at least one of the following features is present: the existence of externalities; the involvement of public goods; or imperfect or asymmetric information.[9]

3.6 The Assessment identifies the existence of positive externalities because the Redevelopment will generate social benefits that will not be fully captured by the Developer. In light of the Additional Viability Gap Funding identified (and verified in a report produced by Deloitte), the Council is satisfied that a market failure would prevent the Redevelopment from proceeding.

3.7 Market failures stemming from positive externalities are well-established and set out in the Statutory Guidance.[10] We consider that this market failure is expressed and evidenced reasonably well. The Assessment could, however, more clearly establish the scale of the market failure, in line with the Statutory Guidance.[11]

Equity rationale

3.8 The Statutory Guidance explains that, in the absence of market failure, market forces tend to bring about efficient outcomes, but they can also lead to unequal or unfair outcomes. Equity objectives seek to reduce these disparities between different groups in society or geographic areas.[12]

[9] Statutory Guidance, paragraphs 3.21-3.32.

[10] Statutory Guidance, paragraphs 3.22-3.26.

[11] Statutory Guidance, paragraph 3.33.

[12] Statutory Guidance, paragraphs 3.35-3.39.

3.9 The Assessment states that the Redevelopment ‘will address an equity rationale, in particular via the provision of up to 300 affordable housing units in an area in which there is considerable un-met demand. The Scheme (and by extension the Subsidy) will therefore reduce social and/or economic disadvantage’.

3.10 In our view, the Assessment provides a plausible equity rationale for the affordable housing element of the development. It also offers some useful evidence of the group(s) that might benefit most from this.

Consideration of alternative policy options and why the subsidy is the most appropriate and least distortive instrument

3.11 In order to comply with Principle E, public authorities should consider why the decision to give a subsidy is the most appropriate instrument for achieving the identified policy objective, and why other means are not appropriate for achieving the identified policy objective.

3.12 The Assessment and supporting evidence explain that the Council had concluded that the Redevelopment could not be delivered without non-repayable public sector financial support, having attempted to do so in 2013.

3.13 Under Principle E, the Assessment sets out alternative funding options considered by the Council, including a repayable loan, acquiring a shareholding in SPRL, and forward funding of certain elements of the Redevelopment in return for a fixed percentage return. These options were deemed not appropriate as the amount of subsidy required would have been greater than the proposed subsidy and they exposed the Council to the development risk associated with the Redevelopment.

3.14 The Assessment also lists under Step 2 a series of alternative options that the Council considered for the regeneration of City Centre South, including refurbishment; part re-build, part refurbishment; majority rebuild and reconfiguration; and alternative comprehensive redevelopment. The full business case analyses these options further.

3.15 In our view, the material provided by the Council shows that the Council has considered other ways of achieving the policy objective and identifies why these alternatives are not the most appropriate instruments. However, the Assessment would be improved by ensuring that all relevant options are considered under Step 1.

3.16 We consider that the Assessment could also be improved by providing additional evidence and analysis to explain why the alternative options to fund the viability gap were deemed less appropriate. In particular, the Assessment notes that the Deloitte report supports the view that a repayable loan would not be feasible, but the Assessment does not provide additional evidence to support this.

Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change

3.17 The second step involves an evaluation of the assessment against:

3.17.1 Principle C: First, subsidies should be designed to bring about a change of economic behaviour of the beneficiary. Second, that change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy; and

3.17.2 Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.[13]

Counterfactual assessment

3.18 In assessing the counterfactual, the Statutory Guidance explains that public authorities should assess any change against a baseline of what would happen in the absence of the subsidy (the 'do nothing' scenario').[14] This baseline would not necessarily be the current 'as is' situation (the 'status quo') but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.

3.19 The Assessment outlines a 'do nothing' counterfactual under which the Redevelopment would not proceed, the existing retail occupiers would continue to trade without investment in their premises, the surrounding public amenity infrastructure and car parking provision would remain as it is, and no new housing (including affordable housing) would be delivered in the city centre. Under this scenario, the city centre would likely decline and the full business case assumes that the City Centre South may ultimately close within the next 20 years. The full business case anticipates an increase in maintenance cost, and a reduction in business rates income, rental income and the number of jobs, not only in City Centre South but also in the rest of the city centre.

3.20 We consider that the Assessment could be improved by providing additional evidence and analysis used to select the most likely counterfactual. In particular, the Assessment could set out in more detail what would likely happen in the future, over both the long and short term, in the absence of the subsidy. Where there are a range of possible outcomes, such as the possibility of small-scale redevelopments in City Centre South, the Assessment could set these out and explain how the most likely counterfactual was chosen. The Assessment could also

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[13] Further information about Principles C and D can be found in the Statutory Guidance (paragraphs 3.43-3.57) and the SAU Guidance (paragraphs 4.12-4.14).

[14] Statutory Guidance, paragraphs 3.46-3.47.

make better use of available evidence, including the retail report prepared by the commercial real estate services provider, CBRE.[15]

3.21 We also consider that the Assessment could more clearly address the impact of recent events on the counterfactual. For example, the Assessment could describe in more detail the likely impacts of the redevelopment of the railway station and the project at Friargate on the counterfactual.

Changes in economic behaviour of the beneficiary

3.22 The Statutory Guidance sets out that subsidies must bring about something that would not have occurred without the subsidy.[16] In demonstrating this, public authorities should consider the likely change or additional net benefit.

3.23 The Assessment states that the Developer has not begun construction work on the Redevelopment and will not do so without public support. The provision of the subsidy would therefore result in a change in the behaviour of the Developer.

3.24 We consider that the Assessment sufficiently describes that the expected change in economic behaviour is the Redevelopment against a counterfactual whereby the project would not go ahead.

Additionality assessment

3.25 According to the Statutory Guidance, 'additionality' means that subsidies should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy.[17]

3.26 The Assessment considers the additionality requirement at a high level. It states that the Council is satisfied that the subsidy would not compensate any party for any costs that party would have funded in the absence of any subsidy. It refers to several provisions in the Development Agreement[18] which support this conclusion, including:

3.26.1 SPRL being a special purpose vehicle incorporated for the purpose of carrying out the Redevelopment, with no other functions;

[15] The report states that: The '[b]uildings are of poor quality, tired in appearance, and of a size and form not suited to the needs of high quality modern retailing, similar to other cities in the UK devasted by bombing in the second world war such as Swansea, Plymouth, Southampton and Bristol'. 'Retailers will not invest in a dated environment that doesn't offer the ability to showcase their product to its best, which requires modern, fit-for-purpose units'.

[16] Statutory Guidance, paragraph 3.50.

[17] Statutory Guidance, paragraphs 3.49-3.53.

[18] The Development Agreement was entered into between the Council, SPG as guarantor and SPRL as developer on 21 March 2019 in order to regulate the Council's procurement of a comprehensive retail led mixed use redevelopment of the City Centre South.

3.26.2 the use of the subsidy by the Developer being ring-fenced for specific works, so it 'will not fund the 'business as usual' costs' of the Developer; and

3.26.3 a requirement that works must be approved by the Council's own monitoring surveyor before payment becomes due.

3.27 Under the assessment of Principle B under Step 3, the Assessment suggests that compensation for a viability gap, by its nature, cannot be compensation for 'business as usual' costs (because the project would not otherwise be undertaken).[19]

3.28 The Assessment states that it can be 'assumed' that the Reverse Premium will be required for the Redevelopment to go ahead but does not provide the evidence and analysis used to form this assumption.

3.29 We consider that the Assessment could be improved by providing further evidence and analysis to better explain how the payment of a Reverse Premium as well as the Additional Viability Gap Funding complies with the additionality requirement. The Assessment could provide more detail on the calculation of the Reverse Premium and better explain why it would not compensate for costs that would have been funded anyway.

3.30 We observe that the subsidy design features identified in paragraph 3.32 are intended to limit the size of the subsidy and, therefore, reduce the likelihood of the subsidy overcompensating the beneficiary.

Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible

3.31 The third step involves an evaluation of the assessment against:

3.31.1 Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and

3.31.2 Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom. [20]

[19] The Statutory Guidance (paragraph 3.52) states that subsidies should not normally compensate for 'business as usual' costs – in other words, those costs that the beneficiary would have incurred and had to fund itself in the absence of any subsidy.

[20] Further information about Principles B and F can be found in the Statutory Guidance (paragraphs 3.58-3.93) and the SAU Guidance (paragraphs 4.15- 4.19).

Proportionality

3.32 The Assessment sets out that the subsidy represents a relatively small proportion (less than 10%) of the overall cost of the Redevelopment. It notes that Deloitte reviewed the Developer's viability gap assessment and concluded that it was reasonable. The Assessment also explains how the following elements of the subsidy's design help minimise the size of the subsidy:

3.32.1 the use of a competitive tender process for the selection of both the Developer and contractors and consultants;

3.32.2 the Developer must work collaboratively with the Council to seek to minimise the amount that the Council is required to pay to the Developer;

3.32.3 a cap on the size of the subsidy; and

3.32.4 the Council will be entitled to a one-half share of any surplus from the value of the completed Redevelopment after deducting the cost of construction, the subsidy and the developer's profit margin.

3.33 We consider that the proportionality assessment includes useful consideration of the subsidy characteristics and that the Council has provided some evidence in support of its assessment (including a report from Deloitte on the size of the viability gap).

3.34 We consider that the Assessment could be strengthened by providing more of the evidence and analysis used to assess whether the size of the subsidy is limited to the minimum necessary to achieve the specific policy objective(s). It may be commensurate to provide some of the following:

3.34.1 additional cost modelling and sensitivity analysis, with details of sources of uncertainty and how significant amounts would change if key judgements and estimates were altered;[21]

3.34.2 an explanation of how the Council's entitlement to overage was designed to incentivise the change in economic behaviour while not overcompensating the beneficiary;

3.34.3 more information on how the costs associated with preliminaries and contractors' overheads (equating to a significant proportion of the construction costs) were assessed;[22] and

[21] Where data is available and it is commensurate to do so, public authorities should use cost modelling to determine the appropriate, proportionate size of the subsidy. Statutory Guidance, paragraph 3.75.

[22] Deloitte's report states that 'the allowances for preliminaries are higher than [WT Partners] would anticipate. These present a potential opportunity for savings, which can then be considered alongside some of the risks identified'. The Assessment does not explain how this has been addressed.

3.34.4 further analysis on the reasons for the Reverse Premium being needed 'to help meet an anticipated shortfall in development profit'.

Assessment of effects on competition or investment

3.35 The Assessment identifies the relevant market as being construction in the UK. It notes the subsidy would represent a negligible proportion of the value of new work commissioned in this market. The Assessment further states that the market is served by a significant number of firms. It concludes that the subsidy would have a negligible negative effect on competition in the construction market, and may even have 'a beneficial effect by allowing a relatively small player […] to take on a significant development that might otherwise have been allocated to one of the 'big 5'.

3.36 Overall, the Assessment usefully considers a number of the relevant issues. It refers to Annex 2 of the Statutory Guidance and is informed by previous CMA decisions (and those of its predecessor the Office of Fair Trading). It could however be improved by further considering, in light of those materials, whether a different market definition might be more appropriate either geographically and/or in product terms. It could for instance explore the impact on developments within the local area or on a narrower market for regeneration projects. We also consider that the Assessment could better indicate who the Developer's closest competitors are, for example by considering the relative strengths and weaknesses of the unsuccessful bidders, how any potential distortions may impact them, and how significant the impacts could be. Relatedly, the Assessment could also be improved by giving more details of the Developer's scale and activities - in particular what proportion of the respective businesses this project represents.[23]

3.37 The Assessment suggests that the award of the contract for the development to SPG might increase competition. The Assessment could be improved by considering more explicitly the size of the Developer relative to competitors.

Design of the subsidy to minimise negative effects on competition and investment

3.38 The Assessment states that the subsidy will not give the Developer an ongoing advantage in the market. In support of this conclusion, the Assessment lists subsidy characteristics that could minimise any distortion of competition, in line with the Statutory Guidance. In particular:

3.38.1 it notes a competitive procurement process was undertaken to appoint the Developer, which included the level of Council funding as a sub-criterion;

[23] See Statutory Guidance, paragraphs 16.18-16.20.

3.38.2 it refers to the value of the UK construction industry in 2021 and observes that the industry is 'characterised by strong competition from numerous players, including those operating on an international basis';

3.38.3 it judges that the size of the subsidy in proportion to the value of new construction work being commissioned in the UK is 'negligible';

3.38.4 the developer will not receive a residual benefit (other than its profit margin, which the Assessment concludes is 'reasonable' and 'would not be excessive for a [redevelopment] of this size and complexity');

3.38.5 the subsidy will only compensate for some of the costs of the Redevelopment, will be time-limited and will not be provided on an ongoing basis;[24] and

3.38.6 it refers to monitoring and evaluation provisions in the Development Agreement which permit the Council to withhold payments if the Developer is in breach of the agreement.

3.39 We consider that the Assessment clearly describes the design features that are intended to limit negative effects on competition and investment. The Assessment could be improved by considering how these would work in a more narrowly defined market, as set out in paragraph 3.36.

3.40 As noted at paragraph 3.29, we consider that more information could be provided on the need for the Reverse Premium. The Assessment could specifically address whether it will affect the Developer's profit margin and, if so, whether it is likely to have a negative effect on competition and investment.

Step 4: Carrying out the balancing exercise

3.41 The fourth step involves an evaluation of the Assessment against subsidy control Principle G: subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on: (a) competition or investment within the United Kingdom; (b) international trade or investment.[25]

3.42 The Assessment summarises the beneficial impact from the subsidy, and sets out evidence of this in the full business case.

[24] The subsidy will be drawn down in a number of discrete tranches over a defined period of time, linked to target dates for the Developer to complete particular phases of the Redevelopment. In order to be eligible for reimbursement by the Council, all qualifying expenditure must be incurred by the Developer within specific 'target/ultimate construction dates' set out in the Development Agreement.

[25] See Statutory Guidance (paragraphs 3.96-3.98) and SAU Guidance (paragraphs 4.20-4.22) for further detail.

3.43 The Assessment notes that the Council has not identified any material negative consequences of the subsidy and only briefly considers some potential negative impacts of the subsidy.

3.44 In our view, the Assessment provides some useful analysis on the beneficial effects of the subsidy but could have provided further evidence and analysis to demonstrate how the Council approached the exercise of balancing these beneficial effects against any negative effects.

3.45 The Assessment could be strengthened by explaining how the wider benefits outlined in the Assessment relate to the specific policy objective(s). The Assessment could also have provided further analysis and a more fully articulated description of the potential negative effects arising from the Redevelopment, and why the benefits outweighed these.

Energy and Environment Principles

3.46 This step involves an evaluation of the Assessment with regard to compliance with the energy and environment principles, where these are applicable to the subsidy/scheme.[26] The Statutory Guidance summarises the scope of the different energy and environment principles that apply to different types of subsidies.[27]

3.47 The Council conducted an assessment of the subsidy against Principles A and B. We are satisfied that the other energy and environment principles are not applicable to this scheme.

General observation on the Energy and Environment Principles

3.48 Section 13 of the Act requires a public authority to consider the energy and environment principles before deciding to give a subsidy in relation to energy and environment. The Statutory Guidance states that the Energy and Environment Principles apply only where the subsidy's specific policy objective (or one of its objectives) relates to energy or the environment.[28] Public authorities giving subsidies that have incidental benefits in relation to energy or the environment, that are not related to the policy objective of the subsidy, need not consider these Principles.[29]

[26] See Schedule 2 to the Act.

[27] Principles A and B apply to all subsidies in relation to energy and environment. Principle C applies for subsidies for electricity generation adequacy, renewable energy or cogeneration. Principle D applies to subsidies for electricity generation only. Principle E applies to subsidies for renewable energy or cogeneration. Principle F applies to subsidies in the form of partial exemptions from energy related taxes and levies. Principle G applies to subsidies that compensate electricity intensive users for increases in electricity costs. Principle H relates to subsidies for decarbonisation of industrial emissions. Principle I relates to subsidies for improving energy efficiency of industrial activities.

[28] Statutory Guidance, paragraph 4.3.

[29] Statutory Guidance, paragraph 4.6.

3.49 The Council submitted that the Energy and Environment Principles A and B are relevant because the Redevelopment will support a modal shift away from private transport, thereby contributing to meeting Net Zero carbon targets, and several relevant Council policies seek to promote increased environmental protection.

3.50 We consider that the Assessment does not clearly set out the specific policy objective(s) of the subsidy (see paragraph 3.4). For the purposes of the evaluation below, we have assumed that at least one of the specific policy objectives of the subsidy relates to energy or the environment and therefore that the Energy and Environment Principles apply. However, the Council might want to reconsider the applicability of these principles, depending on the specific policy objective(s) of the subsidy.

Principle A: Aim of subsidies in relation to energy and environment

3.51 The assessment against Principle A should show how the subsidy is consistent with delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy. If a subsidy is in relation to both energy and environment, it should meet both of these limbs.[30]

3.52 The Assessment points to certain clauses in the Development Agreement ensuring that the subsidy will contribute to an increase in environmental protection compared with a situation without the subsidy. These include for instance requirements to use methods, where possible, to reduce carbon emissions, maximise the integration of features protecting the environment (eg green, brown or blue roofs), maintain appropriate levels of green space or promote future-proof living to ensure longevity of the Redevelopment.

3.53 The Assessment could be improved by explaining how the subsidy increases the level of environmental protection compared to the level that would be achieved in the absence of a subsidy. For instance, such assessment could set out a baseline position in relation to the carbon emissions and other aspects of Net Zero and environmental benefits considered under Principle A of the Assessment.

Principle B: Subsidies not to relieve beneficiaries from liabilities as a polluter

3.54 The assessment against Principle B should explain clearly how the proposed subsidy or scheme does not relieve a polluter from having to bear the full costs of the pollution caused.[31]

[30] Statutory Guidance, paragraphs 4.19-4.28.

[31] Statutory Guidance, paragraphs 4.29-4.35.

3.55 In the Assessment the Council states the Developer has never been the owner or occupier of the site, and therefore is exempt from liability. However, the Assessment would be improved by explicitly addressing whether any relief from polluter liability is available through the subsidy, in particular through the Development Agreement, in relation to the activities carried out by the Developer.